

BEFORE THE NATIONAL LABOR RELATIONS BOARD
UNITED STATES OF AMERICA
REGION 19

EAGLE GUARD SERVICES

Employer

and

Case 19-RC-14289

INTERNATIONAL UNION, SECURITY,
POLICE AND FIRE PROFESSIONALS
OF AMERICA (SPFPA)

Petitioner

SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 24/7 (IUSO)

Intervenor¹

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a Hearing Officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record² in this proceeding, the undersigned finds³:

SUMMARY

The Employer is engaged in the business of providing security services to businesses in the Puget Sound area in the State of Washington. The Petitioner filed the instant petition seeking a unit of all the Employer's regular full-time and part-time security officers. It is

¹ In response to a motion to intervene filed by the IUSO on January 9, 2003, the Acting Regional Director issued an order on March 19, 2003, granting the IUSO intervenor status on a limited basis. Specifically, the order limited IUSO's participation to matters concerning the Petitioner's potential status as a non-guard union. In making such a determination, the Region took administrative notice that as IUSO is an admitted non-guard union, and, thus, cannot, in the case of an election, secure a place on a ballot or be certified under Section 9(b)(3) of the Act.

² Briefs were timely received from the parties and were duly considered.

³ The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed; the Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein; the labor organization herein involved claims to represent certain employees of the Employer and; a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

undisputed that the unit sought by the Petitioner consists only of guards as that term is defined by Section 9(b)(3) of the Act. Rather, the disputes in this case center on three issues raised by the Intervenor. The first issues deals with the Intervenor's contention that Petitioner represents both guards and non-guards at other places of employment across the nation. However, at the hearing, the Hearing Officer limited the introduction of evidence to one other employer, Daimler Chrysler Corporation. The second and related issue concerns whether Petitioner represents both guards and nonguards in Daimler Chrysler's operations, for if it does, Petitioner would be barred by Section 9(b)(3) of the Act from seeking certification of the petitioned-for unit. The third and last issue involves the Intervenor's request to be listed on the ballot in the event that I direct an election in this matter.

As discussed more fully below, I find that the Hearing Officer properly limited the Intervenor's introduction of evidence concerning other employers to only Daimler Chrysler. I further find that the Petitioner only represents guards at Daimler Chrysler and, thus, may be certified as the representative for the petitioned-for unit. Finally, on the issue of the Intervenor's placement on the ballot, I find that Board law prohibits such placement and, thus, I shall deny the Intervenor's request in this regard.

Set forth below is a brief discussion of the three issues described above. Following the discussion is the Direction of Election.

A.) Hearing Officer's Ruling which Limited the Introduction of Evidence by Intervenor

In terms of background, the Intervenor and the Employer have had a collective-bargaining relationship as evidenced by their collective-bargaining agreement, which expired on October 31, 2002. On August 7, 2002, the Petitioner timely filed a petition seeking to represent the security officers who had been represented by the Intervenor. It is undisputed that the Intervenor admits both guards and non-guards as members of its organization. It is also undisputed that the unit sought by Petitioner only covers guards employed by the Employer and there is no contention that the unit is inappropriate. Nevertheless, there have been relatively protracted proceedings that took place prior to the hearing in this case. Those proceedings are documented in the Board Exhibits that were made a part of the record in this matter. In sum, those proceedings dealt with the Intervenor's contention that Petitioner, like the Intervenor, is a guard-nonguard union.

At the hearing, the Intervenor made an offer of proof regarding the status of employees represented by the Petitioner in three other employers' operations, in addition to evidence that it introduced regarding Daimler Chrysler. In addition to Daimler Chrysler, the three other employers are Pinkerton, Budd Company, and Bell Helicopter. The Intervenor contends that the Petitioner represents both guard and nonguard employees in Pinkerton, Budd Company and Bell Helicopter's respective operations. As set forth in my April 15, 2003, Order⁴, I had previously considered this issue and had rejected the Intervenor's offer of evidence as it related to Pinkerton, Budd Company, and Bell Helicopter. The Hearing Officer, as well, rejected the same offer based on the rationale that I articulated in my Order. Based on the above and record as a whole, I sustain the Hearing Officer's ruling rejecting the Intervenor's offer of evidence concerning Pinkerton, Budd Company and Bell Helicopter. However, the Hearing

⁴ Board Exhibit 1(V), Order Denying Motion in Limine to Defer Section 9(b)(3) Issues and Granting Motion to Define and Limit the Scope of the Section 9(b)(3) Issues (hereinafter "Order").

Officer, at the hearing, properly permitted the Intervenor's introduction of evidence relating to Petitioner's representation of employees at certain Daimler-Chrysler locations.⁵

B.) Guard-nonguard Status of Petitioner

Turning to the issue surrounding Petitioner's representation of employees working at Daimler Chrysler locations, Petitioner's bargaining unit of over 400 employees consists of more than 100 fire security specialists (FSS) and senior fire security specialists (SFSS), with the remainder consisting of fire security officers (FSO). While the Intervenor agrees that the FSOs are guards, it alleges that the FSS and SFSS employees, whom the Petitioner represents and admitted to membership as part of the same unit, are not guards under Section 9(b)(3) of the Act. Based on this assertion, the Intervenor argues that the Petitioner is not a certifiable labor organization.

The Petitioner's status at Daimler Chrysler was also challenged at the pre-election hearing in case 7-RC-22449 by the National Union of Security Professionals.⁶ The Regional Director in that case issued a Decision and Direct of Election (DDE) finding that the FSSs and SFSSs are guards as defined by Section 9(b)(3), and, thus, the Petitioner is not disqualified under the Act from representing the guard unit at Daimler Chrysler. After careful consideration of the instant record and Region 7's DDE, I find that the record evidence in the instant case and in Case 7-RC-22449 are substantially the same. Thus, I conclude, for the same reasons described in Region 7's DDE, that Daimler Chrysler's FSSs and SFSSs are guards within the meaning of Section 9(b)(3). Because the Petitioner solely represents guards in Daimler Chrysler operations, it may, through a Board conducted election in the instant case, seek Board certification as the bargaining representative of the petitioned-for unit of all guards.

C.) Intervenor's Request to be Placed on Ballot

In its brief, the Intervenor requested, for the first time during these proceedings, to be placed on the election ballot, in the event that I direct an election. Intervenor claims that the sole purpose for placement on the ballot would be to obtain arithmetical results of the election, rather than a certification, in the event it won the election. However, as the Intervenor acknowledges, it is a labor organization that represents both guards and nonguards and is, thus, disqualified under Section 9(b)(3) from certification as a bargaining representative. In *University of Chicago*, 272 NLRB 873 (1984), the Board stated that not only is a labor organization, which is disqualified under Section 9(b)(3) barred from the formality of certification, it is also precluded "from taking advantage of the Board's election processes, including the privilege of being placed on the ballot as an intervenor with an accompanying certification of the arithmetical results." In view of the above, the Intervenor's request to be placed on the ballot is denied.

Based on the foregoing discussion and the record as a whole, I shall direct an immediate election be held in the following appropriate unit⁷:

⁵ The Hearing Officer's ruling permitting the introduction of evidence regarding Daimler Chrysler Corporation is also consistent with my April 15, 2003, Order.

⁶ In my April 15, 2003, Order, I stated that I may take judicial notice of Region 7's Decision in Case 7-RC-22449. In line with that statement, I have taken administrative notice of the Board's proceedings in Case 7-RC-22449.

⁷ The Unit description is in substantial accordance with the stipulations arrived at by the parties at the hearing.

All full-time and regular part-time security officers, leads, and site supervisors⁸, employed by the Employer in the Puget Sound region of the State of Washington, excluding all other employees and supervisors as defined in the Act.

There are approximately 56 employees in the unit.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike, which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by International Union, Security, Police and Fire Professionals of America (SPFPA).

1.) List of Voters

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that an election eligibility list, containing the alphabetized full names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 19 within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. The Region shall, in turn, make the list available to all parties to the election.

In order to be timely filed, such list must be received in the Regional Office, 915 Second Avenue, 29th Floor, Seattle, Washington 98174, on or before June 27, 2003. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile

⁸ At the hearing, the parties entered into a stipulation, which I accept, that leads and site supervisors are to be included in the Unit as employees in these classifications are not statutory supervisors since they do not possess any of the statutory indicia set forth in Section 2(11) of the Act.

transmission to (206) 220-6305. Since the list is to be made available to all parties to the election, please furnish a total of 4 copies, unless the list is submitted by facsimile, in which case only one copy need be submitted.

2.) Notice Posting Obligations

According to Board Rules and Regulations, Section 103.20, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of three working days prior to the date of election. Failure to follow the posting requirement may result in additional litigation should proper objections to the election be filed. Section 103.20(c) of the Board's Rules and Regulations requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

3.) Right to Request Review

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by July 7, 2003 .

DATED at Seattle, Washington, this 20th day of June 2003.

Catherine M. Roth, Acting Regional Director
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